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LETTER TO SIMON M'GILLIVRAY 1827 . MACKENZIE . MONTREAL



LETTER

TO

SIMON M. GILLIVRAY, Esq.

IN ANSWER

TO ONE ADDRESSED BY HIM TO THE CREDITORS

OF THE LATE FIRMS OF

M^cTAVISH, M^cGILLIVRAYS & CO.

AND

M^cGILLIVRAYS, THAIN & CO.

DATED

LONDON, 26TH OF FEBRUARY, 1826,

BY

HENRY MACKENZIE,

LATE PARTNER OF THE FORMER FIRM.

Montreal:

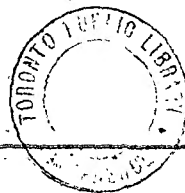
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Montreal, 19th June, 1827.

TO SIMON MCGILLIVRAY, ESQUIRE,

LONDON,

SIR,

It is with extreme regret that I find myself under the necessity of endeavouring, thus publicly, to correct the mis-statements and rebut the animadversions of a person whose interests were once intimately connected with my own. But I must either adopt this course or be content patiently to lie under the load of imputation cast upon my character and conduct, relative to the affairs of the late North West Company, in your last letter, addressed "to the Creditors of the late firms of M'Tavish, M'Gillivrays & Co., and M'Gillivrays, Thain & Co."—This is what I have not resignation enough to do; and if I had, a sense of duty to myself and my friends would compel me to vindicate myself even in the face of your formidable and well exercised epistolary attainments.

To those, then, whom you have so edified, I make my appeal, persuaded that when they shall have perused the plain statement of a plain man, they will do him that justice, which, it appears, he might vainly look for at your hands.

On the 1st of November, 1814, I entered into the association then formed under the continued title of M'Tavish, M'Gillivrays & Co., as co-agents, with the firm of Sir Alexander M'Kenzie & Co. for the North West Company. I did not obtain this distinction by dint of solicitation, but as a person who had enjoyed the entire confidence of the preceding firms of M'Tavish, Frobisher & Co. and their successors, M'Tavish, M'Gillivrays & Co., and whose experience and activity in the branch of commerce in which they had been engaged, seemed (if I may venture so to say) to render him an acquisition. In fact, I entered it on earnest invitation, abandoning other pursuits to which it would have perhaps been fortunate that I had adhered.—I am far, however, from meaning to say that I did not contemplate considerable advantage. I knew the fur trade to be very lucrative, as conducted by the old firms, (in whose employ I had been many years, and with whom I was afterwards connected for some years at Terrebonne, under the firm of M'Kenzie, Oldham & Co.,) and I had no reason to anticipate the reverse in the new. But I soon found myself mistaken. Shortly after I joined it, the conduct of my partners became wholly inconsistent, not only with the general principles of co-partnership, but with the very articles of our association. The books and accounts seemed confined to the examination of only a chosen few,—I was denied access to them on various pretences,—my partners entered into several transactions without either asking my advice, or afterwards communicating their existence,—and even a negociation with the late Earl of Selkirk was, in the winter of 1815–16, commenced and carried on, which was carefully concealed from me. Justly displeased at such circumstances, and aware of the fatal tendency of disunion, or even a want of mutual confidence, I, on the 1st of May, 1816, (Mr. M'Leod being then on the eve of his departure for the North West,) addressed a letter to the members of the House complaining of those improprieties, requesting that they should be discontinued, and at the same time, giving them notice, that as to all and every the past as well as the future transactions made and entered into without my knowledge and approbation, it should remain optional with me to abide by the result or not.—See Appendix A.

To this letter I received a satisfactory, though verbal, assurance, that those subjects of complaint should not recur. But, notwithstanding this assurance, I was obliged to reiterate my remonstrances, not only on their recurrence, but on the subject of a profusion and extravagance in the manner of conducting the business of the firm, which was wholly unjustifiable. Accordingly, I addressed to my partners a letter, I think in June 1819, submitting amongst other things, to them, the necessity that I should be permitted immediately to take an active part in the Counting House, &c.—To this proposal they remained silent, until the 24th of November, 1819, when there occurred a more efficient opportunity of remonstrating a third time, which I did in writing as follows:—

“The signatures of the partners composing the House of McTavish, McGillivray & Co. being about to be required to sign the balance sheet of the books thereof closed on the 30th of November, 1818; and as such an act would infer an unqualified and unlimited acquiescence of the aforesaid individuals in every past circumstance that has occurred in the management of their concerns, Mr. Henry Mackenzie, before, by such signature-making admissions, not quite consonant to the impressions on his mind, thinks it fair as a man of honesty and candour, at the same time that he does full credit to the intentions, to explain wherein the measures of his esteemed friends and associates, have not, in his judgment, been altogether conducive to the interests of all, nor in strict conformity to the articles of co-partnership.

1st—Each partner has not been furnished with an authenticated copy of the articles of co-partnership, nor had he at all times free access to the original; which, it is apprehended, should be, for such purpose, deposited in the vault, as well as all the other records and private documents of the firm.

2d—The concern in the Mackinac Company, to which Henry Mackenzie was a party, was closed before the agreement expired, without any intimation being given to him, or his consent asked.

3d—It appears that proposals were made to the Earl of Selkirk and the Hudson's Bay Company in the autumn of 1815, for a participation of the Indian trade, and although Henry Mackenzie was constantly in attendance at his post in Montreal, the other partners commenced and broke off that negotiation without once consulting him on the subject, and therefore he does not feel himself liable for the consequences should the same prove prejudicial to his interest.

4th—By the agreement with his partners, Henry Mackenzie, amongst other things, was to carry on a general business for the concern in this country, by which he was induced to enter into the concern under the idea, not only of the general benefit expected to be thereby promoted for the facility of the operations of the firm, but also that thereby he might have had it in his power to attend occasionally to the outstanding dependencies of his former concern.

5th—Instead of availing himself of this clause, Henry Mackenzie was engaged for a considerable time in settling old accounts and estates—and was afterwards induced to consent to become the agent of the concern in relation to the disputes of the North West Company with the Earl of Selkirk, and he submits that these extra services have not been duly appreciated by his associates.

6th—The agents' (of the North West Company) office should be reduced to fewer expenses. The charges on merchandize-account exceed the annual expenditure nearly three times the sums expended by the old concerns for the same duty and labour, and which extra expenses, if continued, will, with interest, amount to nearly £20,000 at the end of the concern, by which, Henry Mackenzie apprehends, the whole of, and more than the emoluments, arising from the agency, are likely to be absorbed.

7th—In the articles of co-partnership there are certain remunerations stipulated, but others have been made since without the knowledge or consent of Henry Mackenzie. And such extra allowances, if not checked, will also amount, including interest, to about £20,000 at the end of the concern.

8th—Henry Mackenzie objects to the mode of transacting business at Fort William, on the part of the agents of the North West Company, as, in fact, he is at this moment ignorant of who are, or who are not, his partners in the

North West Company, never having given, to the best of his recollection, his power to alter or amend the institutions of that concern.

9th—Henry Mackenzie is likewise further awakened to these observations, by proposals having been made, lately, at Fort William, to the North West Company, for a new association, without the same having been submitted, before or after, to the partners here.

10th—Henry Mackenzie objects also to the signing of Bills of Exchange by anticipation, and when the person so signing is, perhaps, absent from the country: though he finds no fault with the restriction of the signature to one individual, provided such person be on the spot, he thinks, moreover, that the restriction to one individual of signing checks or drafts on the Bank is attended at times, with great inconvenience, and is of opinion that this henceforward be exercised by any individual of the firm who may be present, and as the case may require.

11th—Henry Mackenzie declines signing the document in question until he is fully satisfied the same is according to the spirit of the agreement, which agreement, he feels himself called upon to say, has been neglected, and more particularly as respects the objects herein specified.

HENRY MACKENZIE.

Montreal, 24th November, 1819."

But these violations of agreement and improprieties, were not all I had to complain of—matters of far deeper interest were to be objected to in the conduct of yourself and brother.

Hitherto you had indeed shown a total disregard of the articles of copartnership and the general law of mercantile association, yet still had kept the firm entire; but on the 26th of March, 1821, you assumed higher powers, in conjunction with Edward Ellice, Esq., of London, representing yourselves as a sort of sovereigns of the North West Company, and of the firms their agents, and took upon yourselves wholly to dissolve the North West Company, one year and a half before the stipulated period of its termination (and notwithstanding an agreement, entered into in duplicate, at Fort William, in 1820, to which you were a party, to continue the North West Company till the returns of the outfit of the year 1832,) and incorporated it with the Honorable Hudson's Bay Company, securing to yourselves, by the terms of the negociation, emoluments in the latter above all reasonable proportion to those which you possessed in the former—see *Appendix B*. In fact, that some extraordinary measure injurious to the interests of others (and which must be concealed lest it should be thwarted by those whom it was intended to affect) was in contemplation or progress became evident to me in the latter end of 1821, for on the 15th of November of that year, and frequently before, I observed that you, your brother, and Mr. Thain attended by counsel, and with locked doors, held deliberations to which I had no invitation, and from which I was in fact excluded. Towards the close of that day, however, I discovered that the following two advertisements had been sent to the offices of the Herald and Courant newspapers:—

NOTICE is hereby given that, in pursuance and performance of the conditions contained in a certain indenture, whereby it has been agreed that the Indian and Fur Trade, heretofore carried on by the *Governor and Company of Adventurers of England, trading into Hudson's Bay, and the North West Company of Montreal*, respectively, should henceforward under certain terms be carried on by and in the name of the said Governor and Company and their successors exclusively, the said indenture having been ratified and confirmed by the said North West Company, the functions of the Agents of the said North West Company, and also of the Agents of Sir Alexander Mackenzie and Company, have ceased and terminated.

Montreal, 15th November, 1821.

McTAVISH, M'GILLIVRAYS & Co. }
THOMAS THAIN.
PIERRE DE ROCHEBLAVE.

} Agents of the
North West Company.

NOTICE is hereby given that the undersigned Archibald Norman McLeod, Esquire, has retired from and ceased to be a Partner of the house or firm of M^cTavish, M^cGillivrays & Co.

Montreal, 15th November, 1821.

M^cTAVISH, M^cGILLIVRAYS, & Co.
A. N. McLEOD.

Having ascertained this fact, and before publication, I informed both Mr. Gray and Mr. Mower, the proprietors of those papers, that it was premature to publish them, as my consent had not been had, and that it was improper, because the contents were not true; upon which, they at that time abstained from publishing them. I then prepared an advertisement to accompany those just mentioned or to be published apart, which the printers on the 17th declined to do.—*See Appendix C.* On the following day, (the 16th November, 1821,) I addressed to you, and the other partners of the house, a letter which I inserted in the letter-book of the concern, and of which I handed each of you a copy signed by me, stating that “common prudence had dictated to me the reiterated objections I had made against many transactions of our copartnership which had taken place without my knowledge or approbation, and that the recent, serious, and unwarrantable proceedings threatened to be carried into effect (at a period too when the books and accounts were not adjusted) determined me more than ever to resist such conduct, &c.—*See Appendix D.*

This declaration extracted, I presume, the resolutions of the secret meeting of the 15th, held by yourself, your brother, and Mr. Thain, therein calling yourselves the *majority* of the firm, which were signified to me, by the ministry of Griffin and Barron, Public Notaries,—intimating, amongst other things, “that it was expedient that you and your brother should proceed to England forthwith, and that Mr. Thomas Thain should, during your absence, be entrusted with the superintendence and management of the general business of the concern in addition to the finances and accounts, of which, since the retirement of John M^cTavish, he had had the charge under the general superintendence of your brother—that during your absence from this Province, Mr. Thain should be authorised to superintend and conduct the correspondence, the finances, and the general business of the firm, and to hold and possess the books, papers, and all the other property of the said house on behalf and in trust for all parties holding any just and lawful part, share, claim, or interest therein or any part thereof.”—*See Appendix E.*

To this I promptly replied by the said notarial ministry, “that these arrangements, resolves, and other measures had been taken and entered into without my knowledge or consent, and even without any notice thereof to me proceedings which violated every sacred principle of reciprocity in agreements, and dissolved every social tie. — *See Appendix F.*

Having at length obtained, what I had hitherto asked for in vain, a copy of our articles of copartnership of the first of November, 1814, I made a second reply to those resolves, dated 21st of November, 1821, to which you and those who may read this are particularly referred.—*See Appendix G.* Notwithstanding which you and your brother soon after took your departure for England, leaving Mr. Thain in ample possession.

Your brother remained in England, but you returned the ensuing year; and on the 22d of November, 1822, our copartnership being near its termination, I again addressed you and Mr. Thain, stating, that the length of time which had elapsed since I had seen our books had effaced from my recollection many things recorded in them and left but a feeble impression of others;—that I was thus, at a time when the close of the concern was at hand, ignorant of the precise relation in which I stood with my partners, and without the means of forming a just estimate of my rights,—an acquaintance with which, it must be allowed, was necessary to place me upon a footing with you in any discussion to which the approaching settlement between us might give rise;—that I therefore requested to have immediate and free access to the books for the purpose of making such extracts as I might require; that our connexion being then

so near a termination I thought it a duty I owed to myself to urge an immediate settlement of the accounts, to facilitate the accomplishment of which I would be prepared on a certain day to audit conjointly with you, all the books of account in which I had any concern.—*See Appendix II.*

To this letter, I, on the 23d of November, 1822, received your answer, stating, that you deemed it necessary in reply to my letter to refer me to the tenth article of our deed of copartnership, and also to a certain deed bearing date the 6th of April, 1821;—that the outstanding adventures could not be realised nor even ascertained before the summer of 1824:—that therefore any investigation of the accounts at that time was premature, and, in fact, impracticable,—and that it would be inconvenient at that moment to produce the books for my proposed audit; that it was impossible to anticipate settlements depending on future contingencies, &c.—*See Appendix I.*

Not thinking your answer, to my just requests, satisfactory, I again wrote on the 25th, stating that your letter of the 22d., I was sorry to say, was no answer to mine; that you had either misapprehended its chief purpose, or, not choosing to comply with the request it contained, had evaded the question; that the lengthy statement you entered into established a point I never meant to deny, namely, that our books could not be finally closed, nor the affairs wound up till the outfits were realised; that my request embraced two objects,—*access to the books for the purpose of making extracts for my individual satisfaction, and an audit, or examination, or scrutiny, (if you please,) of the books as they then stood; an explanation of past transactions—not a premature settling of “contingencies” that depended on materials thereafter to be procured;*—I asked you if there was aught in our articles of copartnership to prohibit this?—to prohibit a copartner from seeing the books of the association to which he belonged? If there was such a clause, I called upon you to show it, and I required an explicit answer. As you had left town for St. Antoine, this letter was addressed to Mr. Thain, he being on the spot.—*See Appendix K.* On the 26th, I received Mr. Thain's reply, saying, that in answer to mine of the preceding day, which he had that morning communicated to you, he begged to inform me that the lengthy statement I alluded to was not written *with a view to evade my question*; that your letter had been written with the intention of explaining to me your reasons or rather your opinions why you did not consider it necessary to proceed to the audit, or inspection of the books I alluded to, and that you were still of the same opinion;—that no good could result to either party from such inspection at that time; but, that as I desired an explicit answer, he, Mr. Thain, begged leave to inform me that you could not agree to my request, and that I was well aware, (*independent of the state of the office,*) that his, (Mr. Thain's,) time could be much more beneficially employed attending to other matters.—*See Appendix L.* After this, I had several interviews with Mr. Thain, who informed me that you had both come to the resolution of advancing me some money out of the concern in anticipation of the settlement of our accounts, to enable me, with my other means, to commence business on my own account. This offer I embraced, wearied with making fruitless remonstrances, and glad to separate myself from persons who had shown such a disregard to good faith, and on the 29th of November, 1822, I yielded to certain articles of agreement, in which, after several recitals, it was thus agreed:—

First—That notice, duly signed, should, by public advertisement, be given of the termination on the 30th of November, 1822, of our articles of copartnership of M^cTavish, M^cGillivrays and Co., dated first of November, 1814, and that it should also be notified that the said Thomas Thain was duly authorised to settle, collect, realize, and wind up all the outstanding engagements, debts, credits, and effects whatsoever of or belonging to the same.

Secondly,—That Thomas Thain should retain and hold the sole and exclusive possession, care, and custody of all books, accounts, vouchers, papers, and documents whatsoever of or belonging to our copartnership, until the 30th of November, 1825, in trust for the respective parties concerned or interested in the same.

Thirdly,—That the said Thomas Thain should make up, and on or before the 30th of November, 1825, exhibit just, true, and accurate accounts of all the business and transactions of our copartnership, and of all charges, profits, losses, or other contingencies, in any manner whatsoever affecting the same, but without prejudice to the right of any other of the said parties thereto, to impeach or object to any such part of such accounts as to them or either of them might appear unjust or objectionable.

Fourthly,—That in the event of any such objections or exceptions being made to the said accounts, the party making such objections or exceptions, and the party resisting them, should each name and appoint a disinterested and respectable merchant as an arbitrator, and that these two should nominate and appoint a third, who should also be a respectable and disinterested merchant, and these three arbitrators should, in such manner as they might deem necessary or requisite, examine and investigate such accounts, and such objections or exceptions as aforesaid, and in the premises, and in every point or particular regarding the same, and that the award of the said arbitrators or any two of them should be conclusive, and should be acquiesced in and submitted to by them and each and every of them the parties thereto.

Now, Sir, after these proceedings, in all which you had fully participated, if, indeed, they had not in many instances originated with you, it bespeaks contempt for the opinion of the world that you should treat mine as “imaginary complaints.” Is it an “imaginary complaint,” that the financial concerns of our house, which had been under the management of your late brother, were, and are still wholly concealed from me, and I have been even to this day denied (for what purpose I leave to the conjecture of my readers,) access to the partnership books of account? Is it merely an “imaginary” impropriety that negotiations involving the existence of the house were commenced and broken off wholly without my knowledge? Is it merely an “imaginary” evil that profusion and extravagance reigned both in the domestic habits of the other partners of the firm here and abroad, and in the manner of conducting our business? Is it merely an “imaginary” evil that the North West Company was in a manner dissolved, and its capital (£164,000 sterling) and interests disposed of as the sole property of William M’Gillivray, yourself, and Edward Ellice, without even consulting me, or rendering any account to the parties interested, of whom I was and am one? Is it an “imaginary complaint,” that you should declare the house of M’Tavish, M’Gillivrays and Co. insolvent, for whose engagements I *am* liable, and convey its assets to pay the debts of M’Gillivrays, Thain, and Co. for which I am *not* liable? or that finally I should refuse to ratify an assignment grounded on an alledged insolvency, which I, from my knowledge of the fur trade, could never have expected, and cannot account for, and the reality or causes of which I am, by the studious concealment of the books from me, wholly at a loss to ascertain. And yet, in a tone of triumph, you observe, that “it seems almost needless to argue against such an absurdity, as that partners “of an insolvent firm should be creditors of the same firm.” I argue not so, but I argue, that M’Tavish, M’Gillivrays and Co. may be *solvent* although M’Gillivrays, Thain & Co. may *not*; consequently that you may be a debtor to me, and it is my sincere belief that such will prove to be the case. In the mean time, however, you have the hardihood to lay claim to disinterestedness and a straight forward policy; but the world, Sir, will judge of the credit due to the claims and professions of a man who cannot only counsel and deliberately execute such monstrous acts of injustice, but even attempt to justify them with an air of affected indignation against those who have suffered by them and who venture to complain. That the late firm of M’Tavish, M’Gillivrays & Co. were insolvent on the 30th of November, 1822, is more than either you or I suspected *then*, and is what I firmly disbelieve *now*. I have already mentioned that I was denied access to the books; I, therefore, am unable to refer to their contents for proofs of the correct-

ness of my opinion; but I am no less certain of it, from circumstances within my knowledge. Nay, by the very admission of the firm of M'Gillivrays, Thain & Co., which succeeded the former firm, and whose ostensible members then present, yourself, and Mr. Thain, were the partners who denied me access to the books, and reserved it altogether to yourselves, the preceding firm was solvent, otherwise M'Gillivrays, Thain & Co. would not, by a public advertisement inserted during many months in all the Canadian newspapers, and dated 30th of November, 1822, have "assumed, and declared themselves liable to satisfy, all the engagements contracted by the then late firm of M'Tavish, M'Gillivrays & Co." But, even if it were insolvent, not only am I free from the blame of such insolvency, but I am entitled to credit for strenuous exertions to avert it; and the fault must lie, not on mercantile misfortunes, of which the lucrative nature of the business forbids the supposition, but on the misconduct of individuals. I have already related the remonstrances I was compelled to make on the extravagant manner in which the business was conducted. To this must be added the profusion of some of the partners in their domestic expenditure both in Canada and London—a profusion wholly unsuitable to plain merchants, and affecting a style approaching to magnificence. This is notorious—and it is equally notorious that such profusion I by no means imitated. It is this profusion which probably caused Mr. Thain's debt to the several firms of M'Tavish, M'Gillivrays & Co. and to their successors, and to Sir Alexander M'Kenzie & Co., on the 30th of November, 1825, as I have learned from an authentic source, to amount to £96,018 4s. 8d.; the Honorable William M'Gillivray's, on the 20th of November, 1824, to £23,325 2s. 4d., including £22,000, advanced to him, to meet the demands on him of his former concern; and yours, Sir, on the 30th of November, 1824, to £42,190 10s 6d., which on the corresponding day of the following year, I learn, increased to £50,000 and upwards. Sums which, if forthcoming, would certainly set aside the question of insolvency. The first and last of which seem somewhat extraordinarily to have been incurred by such anti-matrimonial and self-denying personages as those respecting whom you have stated in your memorandum of the 27th of December, 1825, submitted to the creditors. "Mr. Thain and myself refrained from contracting engagements to burthen ourselves with families, which in the case of our partners we had found to be a cause of increased expense;" and may lead your creditors to inquire where was to be found the moiety of the £164,000 mentioned in the said letter as to be furnished by your brother and yourself as your shares of the capital to be joined to that of the Honorable Hudson's Bay Company, and what you mean when you speak of yours and your brother's "estate," and your "capital," and "private fortune,"—and make them smile to hear of "plate" and "favorite pictures." Truly, Sir, I am ignorant of any estate except that in the Isle of Mull, which you, who are so anxious for the good of the creditors, state to be wholly out of their reach,—a circumstance the more to be regretted, as that estate belonged to your brother, the very person to whom, by the articles of our copartnership, the sole administration of the finance of our house was committed, and whose management of them may, without violent supposition, have had unfavorable influence on them. For some time indeed, during his absence in England, he substituted Mr. Thain, but this was contrary to the articles of our association, and, when viewed in relation to Mr. Thain's enormous debt, cannot be called an "imaginary complaint." And I am the more justified in supposing such mismanagement as a consciousness of it appears to be the only obvious reason for the extraordinary circumstance of denying to me access to the books of the firm of which I was a partner; and that on the very frivolous pretext that the accounts could not be finally closed till a year or two afterwards—was this any reason for concealing from me the state of *past* transactions? Certainly not; and, as its frivolity could not have escaped the ability, (which I acknowledge, more especially, Sir, yours; and which in fact cannot politely be refused to your frequent arrogations thereof in your correspondence with the creditors and trustees,) of those who refused, viz. yourself and Mr. Thain, it becomes a matter of serious inquiry, what it was that was so vigilantly concealed from the most active and economical partner of the firm.

In short, the position that I take is, this:—that all the partners, debtors of the firm, should refund to it the amount of their respective debts, (or, in other words, equalize their debts with mine,) which would immediately stifle the pretension of insolvency, and that then the books should be exhibited, each partner's account current made out, and a balance struck—should this be done, I feel confident that a handsome sum of money would be at my disposal over and above the sum you say, *you and Mr. Thain*—“imprudently enough” advanced me. What imprudence there could be in this, I cannot conceive, unless you, Sir, consider it imprudent to introduce into your line of conduct the system of rendering to every one his due.

Indeed, you, in your last letter, would have it believed that I wish to divert my creditors from the pursuit of myself to the chase of “you,” and you have illustrated this alleged attempt by an elegant simile; but after the facts I have stated, I trust it will be seen that far from throwing “*a tub to the whale*,” my object is to direct the *harpooners to the whale*, which so ostentatiously *spouting* now, may afford hereafter a very competent quantity of *blubber*.

“You, it is true, observe, “that if any of these gentlemen (meaning me and others of the same opinion) could “discover a surplus of assets belonging to the firm, and any attempt, on my part, to retain for my own benefit more “than my due share of the same, it would, I admit, afford just cause of complaint on their part against me,”—which is certainly a very candid admission, and the more meritorious as the principle it contains is far from being obvious, since, without it, it never could have been conjectured that to commit a fraud would be improper. Now, Sir, I am at a loss to know what *due share* you have a right to retain of the assets of a firm you alledge to be insolvent. Neither can I accept your defiance to discover such “surplus of assets;” for, though it would be imprudent in me, without conclusive evidence, or at least strong grounds, to cast on you such imputation, yet I would generally and abstractedly observe, that such a challenge might be safely given, inasmuch as sums of money may be spent, especially in the speculative region of London, and be therefore no assets,—or property may be disposed of where it cannot easily be found,—or money may be deposited where it may not be suspected to be, and which it may therefore be very difficult “to discover.”

But you may take a more effectual manner of convincing your creditors, that all your property and that of the firm's have been fairly surrendered, than your reiterated assertions, and at once relieve yourself from your earnest anxiety to produce conviction on that head, by causing a commission of bankruptcy to be taken out against you, when your oath must satisfy the most incredulous, (if any there are who are not yet thoroughly convinced by your assertions,) that you have, at least, given up all the present assets, though the nature of your financial conduct before the dissolution of the firm must remain to me and others a secret, until the books, so long concealed from me, be exhibited. And, indeed, considering how often you have in your correspondence observed how much trouble you have had, and how much injudicious opposition you have experienced, and how ill-requited have been your efforts to settle the estate for the benefit of the creditors, and how a commission of bankruptcy would deliver you from those grievances, I feel somewhat surprised that you have not adopted it.

This suggestion, however, may be treated by you as a species of insolent insurrection against a sort of imperial authority with which you seem to have invested yourself, (the title to which I in vain seek to discover)—an authority which, exercised in a thousand minor instances, broke out with greater *eclat* in your refusal to me access to the books of a firm of which I was a partner, and reached its highest brilliancy in that unauthorised negociation whereby you procured for yourself and, with “*fraternal partiality*,” for your brother, and sympathetic feeling with your bosom friend, Mr. Ellice, those advantages which justly belonged to all the partners of the North West Company, of M'Tavish, M'Gillivrays & Co. and of Sir Alexander M'Kenzie and Co.—(the transaction having taken place during their co-partnerships, and respecting their interests and property;) and you considered it no assumption to stipulate that,

after the lapse of fourteen years, the share or interest you assigned to me in the Hudson's Bay Company, should revert to you and your brother, utterly forgetting that the shares acquired in that Company by you both, and Mr. Ellice, were procured by means of the undivided stock of the North West Company, (and of the other firms,) in which I had a proportionate permanent property, and in the improved value of which, when transferred to the Hudson's Bay Company, I had therefore a similar interest. And this you did, wholly disregarding the circumstance that I had largely participated in the toil, and contributed to the treasure that brought about the coalition, and that the shares which you reserved to yourself and brother and Mr. Ellice, as an indemnification for the cessation of commissions in the London Houses, M^cTavish, Fraser & Co., and Inglis, Ellice & Co., belonged to all those who had been concerned in those houses, and, amongst others to me. And these advantages you procured by representing yourself and your brother the greatest capitalists in the North West Company, when, in fact, owing to the large sums you had drawn out, you had then no capital whatever, but on the contrary were largely indebted to the concern.

The tinsel curtain behind which you have placed your person and actions, I raise with reluctance, but I have been forced to it by your accusation that I, by setting up "imaginary claims," or preventing some creditors from giving effect to your arrangements, and by the interposition of impediments and delays, hope to "extort" some composition out of my claim on the Hudson's Bay share assigned to me, which you maintain belongs to the creditors, and which you have, without my authority, actually assigned over to your own creditors.

That that accusation is manifestly false must be evident from the consideration, that however guiltless I have been of the embarrassments of the firm, and however I may have exerted myself to avert them, yet I am responsible for all its debts, and therefore by no means stand in that commanding attitude that would countenance an attempt to "extort." No, the plain fact is this: I did every thing in my power to cause the business of the company to be conducted with propriety and economy—the fur trade was a prosperous one, and contained in it no seeds of insolvency. You have declared the firm insolvent four years after its dissolution! and after having, by the assumption of its debts impliedly acknowledged its solvency,—and being debarred from access to the books of account, (which this 19th day of June, 1827, has been again denied to me by your Trustees though notariaily demanded,) I am prevented from fully demonstrating whether it is insolvent, or, if so, what have been the causes of its insolvency: whether, (which I cannot believe,) it arose from losses in the trade, or from the extravagance of any of the partners; or from employing its funds in speculations foreign to the business and unknown to any of the other partners; or from loans to support the sinking credit of other houses. I repeat, I cannot venture to say to which of these causes is due the alledged insolvency; but it will be allowed by every reasonable man that I have a right to suspect that there has been something culpable in the conduct of those partners who denied me access to the books; otherwise they would not have been concealed from me.

With a view then to the elucidation of those obscure transactions, I have instituted a suit at law, in the Court of King's Bench here, against the representatives of such partners of the late firm of M^cTavish, M^cGillivrays & Co. as had assumed to themselves the direction of the finance, to compel them to render me that account which they have so long refused to my solicitations,—the result of which will, I feel confident, show to the world the real state of the affairs respecting which you have written so plausibly; and this I have done, fearless of that menace which has imprudently denounced my brother's proceedings in the same court as "rather hazardous to himself." But I trust, Sir, that my conduct will not suffer by a comparison with yours; for I have not let the creditors down by an imperceptible declivity from the hope of twenty shillings in the pound to an eager anxiety to procure twelve shillings and sixpence, nor have I called upon them to surrender their private judgment, and trust implicitly to me, arrogating to

myself "intense application," giving shrewd hints that I am possessed of colossal ability, and finally menacing them "with a commission of bankruptcy," "the Court of Chancery," the "glorious uncertainty of the law on partnership questions," and "the intricacy of conflicting interests in these concerns."

Thus far, Sir, a proper respect for my own character has compelled me reluctantly to animadvert upon your letter of the 26th of February last, addressed to the creditors of M^cTavish, M^cGillivrays & Co. and M^cGillivrays, Thain & Co. and rebut your calumnious imputation on me of an attempt to "extort"—an attempt that my conscience satisfies me I have never made, and which my fellow citizens, among whom I have so long resided, will require something more than your assertion to believe respecting,

Sir,

Your obedient Servant,

H. MACKENZIE.

APPENDIX.

A

Montreal, 1st May, 1816.

Dear Sirs,

Before the departure of a leading partner (Mr. McLeod) permit me briefly to state, that all transactions upon business since last autumn, by our absent partners, have not been duly made known to me:—that in course of the winter, negotiations were actually entered into with our opponents, (the Earl of Selkirk, &c.,) even through the medium of strangers, in which I had no voice;—that others were actually entered into and concluded with my own brother, Donald Mackenzie, without due notice: and I have reason to presume, that communications are now in forwardness to wintering partners to which I am not made privy. In short, gentlemen, it is obvious that many of the most important transactions of our establishment are, and have been, carried on without my knowledge, and likely so to continue;—with the intention, therefore, to avoid the rock upon which some of my predecessors split, (I allude to Sir Alexander McKenzie and Mr. Hallowell,) I do hereby give you due notice, that in all and every the past as well as the future transactions made and entered into without my knowledge and approbation it shall remain optional with me either to abide or not by the result.

I am,

Dear Sirs,

Your most obedient humble Servant,

H. MACKENZIE.

To Messrs. William McGillivray,
Archd. Norman McLeod,
Thomas Thain, and
John McTavish, } PRESENT.

B

EXTRACTS FROM THE COALITION ARTICLES OF COPARTNERSHIP BETWEEN THE HONORABLE HUDSON'S BAY COMPANY AND NORTH WEST COMPANY.

" This indenture made the 26th day of March, 1821, between the Governor and Company of Adventurers of England, trading into the Hudson's Bay, of the first part, and William McGillivray, of Montreal, in the Province of Lower Canada, Esquire, Simon McGillivray, of Suffolk Lane, in the City of London, Merchant, and Edward Ellice, of Spring

"Gardens, in the County of Middlesex, of the second part. Whereas, the governor and company have for many years last past carried on a considerable trade in the purchasing and receiving by way of barter, furs, peltries, and other articles from the Indians in North America, as well within the territory granted by the charter of the said governor and company, as in other parts of North America. And whereas, under or by virtue of an agreement, bearing date the 5th day of November, 1804, and made or expressed to be made between the several parties therein named and mentioned to be the parties then composing the company, or concern trading to the North West or Indian Country, and distinguished by the name of the Old North West Company of the one part, and several persons therein named and mentioned to be the partners in the company then trading to the North West or Indian Country, distinguished by the name of the New North West Company of the other part. The said Old and New North West Companies became united, and in consequence of that union, the said parties hereto of the second part together with the other persons, are now engaged in copartnership in carrying on a trade in purchasing and receiving by way of barter, furs, peltries, and other articles from the Indians in Upper and Lower Canada, and in other parts of North America, in or under the name or firm of the North West Company. And whereas, in consequence of the conflicting interests of the said governor and company and the said North West Company, various disputes have arisen between them, tending to the manifest injury of both parties, and in order to avoid the occasion of such disputes, and for the purpose of promoting their mutual interests, it hath been agreed upon between the said parties hereto, that the said trade shall, from the period hereafter in that behalf mentioned, be carried on exclusively by and in the name of the said governor and company and their successors, for the time, and under the terms hereafter mentioned. And the said parties hereto of the second part, who are the persons entitled to the greater part of the capital of the said North West Company, have agreed to enter into the covenants hereafter contained so and in such manner, as to be bound jointly and severally, as well for themselves as for all other persons who are concerned or interested in the said North West Company and the trade thereof, and otherwise, as heretofore is mentioned in respect to the engagements hereby made with the said governor and company and their successors."

1st—That the trade with the Indians heretofore carried on by the governor and company and North West Company, shall, for the space of 21 years, commencing with the outfit of 1821, and ending with the outfit and returns of 1841, be carried on by the said governor and company exclusively.

2d—Capital stock and outfit to consist of the stock on hand of both companies, on 1st June, 1821, &c. &c.

16th—"That the clear gains and profits arising from the said concern shall be divided into 100 equal shares, and shall belong to the parties following, (that is to say,) 20 of the said shares shall belong to the said governor and company and their successors; 20 others of the said shares shall belong to the parties hereto of the second part, their executors and administrators; 40 others of the said shares shall belong to such persons as shall from time to time, be, by the said governor and company or their successors, appointed chief factors and chief traders for conducting the said trade in the interior of North America, and to such persons as shall hereafter be appointed to succeed them, it being the true intent and meaning of the parties hereto, that the said last mentioned shares shall always be appropriated as a remuneration to the persons actually employed in conducting the trade in North America, or as a temporary provision for persons retiring from such actual employment. Provided that as often as there shall be any loss upon the returns of any one year, forty equal one hundredth shares of such loss shall be set off from and made good out of the said 40 shares, so to be appropriated as aforesaid, the gains and profits arising from the trade of the said concern, in the ensuing year or years, until such 40 shares of total loss shall have fully been made good, and the appropriation of such 40 shall be regulated according to the provisions intended to be contained in a Deed Poll already proposed and engrossed, and intended to bear even date with these presents, and to be under the common seal of the said governor and company. Five shares of the said shares subject to a like proviso for setting off and making good thereof 5 equal one hundredth shares of such total loss as aforesaid, shall belong to the said governor and company or their successors, in order to carry into effect certain arrangements to be by them made with the representatives of the late Earl of Selkirk, deceased: 5 others of the said shares subject to a like proviso for setting off and making good thereof 5 equal one hundredth shares of such total loss as aforesaid, shall belong to the said Simon McGillivray and Edward Ellice, their executors and administrators, as a compensation for the emoluments heretofore arising from the agency and commissions in London, on account of the said North West Company which agency and commissions, will be lost by their respective commercial establishments, in consequence of this agreement—and for which 5 shares the receipts of the said Simon McGillivray, and of the survivor of them, and the executor or administrator of such survivor, shall be from time to time effectual discharges to the said governor and company and their successors. And the remaining 10 of the said shares shall, as to the one moiety thereof, belong to

"the said governor and company and their successors; and as to the other moiety thereof, to the said parties of the second part, their executors or administrators, subject to the provisions hereafter contained, concerning the said remaining 10 shares.

"25th—That notwithstanding any thing heretofore contained, all interest which may be payable to the said parties hereto of the second part, their executors or administrators, under the provisions aforesaid, in respect of their shares of the capital, and also those 20 shares of the clear gains and profits, which it is herein before agreed, shall belong to the said parties hereto of the second part, their executors or administrators, generally, or any part of the said interests and shares may, from time to time, be retained and applied by the said governor and company or their successors, for the purpose of satisfying any deficiency which by reason of the previous losses or neglect to bring in one half such advance as aforesaid, or otherwise there may then be in the share of the said parties of the second part, their executors or administrators, in the capital stock of the said concern, together with any interest that may be payable in respect of such deficiency.

"26th—That notwithstanding any thing heretofore contained, those 10 shares of the said clear gains and profits which it is heretofore agreed, shall, as the one moiety thereof, belong to the said governor and company and their successors, and as to the other moiety thereof, to the said parties hereto of the second part, their executors or administrators shall, from time to time, be invested by the said governor and company and their successors, in their names, in the parliamentary stocks or public funds of Great Britain, or upon government securities in England, which may be varied from time to time, at their discretion, and the said governor and company and their successors, shall stand possessed of such stocks, funds and securities, and the dividends and annual produce shall become due, to divide the same into two equal shares, and to retain one of such shares for their own use, and to pay the other of such shares to the said parties hereto of the second part, their executors or administrators. And upon further trust, at the final winding up and closing of the said concern, to divide the said stocks, funds, and securities, into two equal shares, and to retain one of such shares for the use of the said governor and company or their successors, and to transfer the other of such shares to the said parties hereto, of the second part, their executors or administrators, provided, nevertheless, that the said governor and company and their successors, shall, at any time or times during the continuance of the said concern, be at liberty to apply all or any part of the said stocks, funds and securities, or of the dividends and annual produce thereof, in the increase of the capital stock of the said concern, or in supplying any deficiency thereof, to be occasioned by losses—provided also, that the share of the said parties hereto, of the second part, their executors or administrators in the said stocks, funds and securities, and the dividends and annual produce thereof shall, from time to time, be liable to satisfy such deficiency and such interest, for the satisfying of which, the said 20 shares of the said parties hereto, of the second part, their executors and administrators of the said clear gains and profits, together with interest, payable as aforesaid, and hereinbefore authorised to be retained and applied as aforesaid. And shall, also, from time to time, be liable to satisfy the said governor and company and their successors, all damages to be occasioned to them by reason of the breach of any of the covenants herein entered into by the said parties hereto, of the second part, and that such disposition may be made of the said stocks, funds and securities, dividends and annual produce, as may be necessary or proper for answering the above purposes, or any of them.

"37th—That in the event, and notwithstanding the death, bankruptcy or insolvency of all or any of the said parties hereto, of the second part, and notwithstanding any other cause, matter, or thing, whatsoever, neither the share of the said parties hereto, of the second part, their executors or administrators in the capital stock, debts, and effects of the said concern, or in the aforesaid stocks, funds, and securities, nor any other monies or property which may be payable or belong to the said parties, of the second part, their executors or administrators, in respect of the said concern, nor any part of the said share, monies or property respectively, other than such share of the said parties hereto, of the second part, their executors or administrators, in the interest and in the said gains and profits, and in the dividends and annual produce of the said stocks, funds, and securities, as is to be paid under the provisions aforesaid, shall be drawn out of the said concern, during the continuance thereof.

42d—Parties of the second part, bound to save, defend, keep harmless, and indemnify the governor and company against all claims and demands, evils, damages and losses, occasioned by persons not concerned in present arrangements.

43d—And not oppose, dispute, or interfere with the rights and privileges conveyed by the H. B. charter, but concur and assent in any application for defining and securing the same.

C

Whereas William M'Gillivray, Simon M'Gillivray, Archibald Norman M'Leod, Thomas Thain, John M'Tavish, and Henry Mackenzie, did consent and agree to continue and carry on trade as copartners in the business heretofore carried on by the late firm of M'Tavish, M'Gillivrays & Co. in all matters in which they were in any wise interested or concerned:—And also in all other matters which the said parties thereto might thereafter see fit to undertake or to be concerned in during the period of nine years, commencing on the 1st day of December, 1813, under the firm of M'Tavish, M'Gillivrays & Co., and ending on the 30th day of November, 1822.

And whereas it was also agreed, amongst other stipulations set forth in the said agreement, that on or before the 30th day of November, 1820, the respective parties should require from the others a distinct and explicit avowal of their intention in regard of renewing and continuing the articles of copartnership, or winding up the concern, as the case might require.

And whereas, on the 26th day of March last past, the said William M'Gillivray and Simon M'Gillivray, conjointly with Edward Ellice of the city of London, merchant, did, without the knowledge of the undersigned, enter into an agreement with the Hudson's Bay Company, wherein they, upon their own responsibility, undertook to assign over to the said Hudson's Bay Company all the stock in the trade carried on by the said firm, and others concerned, in the Indian Territories, on the first day of June last past.

And whereas the said John M'Tavish did, in the autumn of the year 1818, retire from the said concern by mutual consent; and the said Archibald Norman M'Leod also retired therefrom in either the month of May or June last past; and the said William M'Gillivray and Thomas Thain entered into copartnership under the firm of Sweenys & Co., in the month of March last past, and into a variety of other concerns in their own names and on their own behalf; and thus the said parties have withdrawn themselves from our said firm save and except the said Henry Mackenzie. Now, therefore, public notice is hereby given, that the said copartnership will not, according to the articles thereof, cease and expire before the 30th day of November, 1822; and all persons having claims or demands on the said copartnership, or on the North West Company, or agents thereof, are hereby notified to make the same, on or before the aforesaid day of November, 1822, to receive and adjust which the undersigned will henceforth give his attendance at the counting-house of the said concerns every day from the hours of ten to three o'clock, Sundays and holidays excepted.

Montreal, 15th November, 9 P. M.

H. MACKENZIE.

D

GENTLEMEN,

Montreal, 16th November, 1821.

Common prudence dictated to me the reiterated objections occasionally made by me against many transactions of our partnership which took place without my previous knowledge and concurrence, and from the recent, actual, serious, and uncommon proceedings threatened to be carried into effect, (at a period too when the books and accounts are not adjusted,) I am now more than ever urged to inform you once for all, that I shall immediately and hereafter resist every extraordinary measure taken, or innovation made, regarding our partnership affairs, without my express sanction and authority first had and obtained,—and I hereby revoke and annul all and every power I may have given (since the articles of copartnership) to any of the partners jointly or severally to transact any part of the business.

I have the honor to be,

Gentlemen,

Your most obedient humble Servant,

H. MACKENZIE.

To the Honorable William M'Gillivray,
 Simon M'Gillivray
 Archd. Norman M'Leod, and
 Thomas Thain, } Esquires.

E

PROTEST AT REQUEST OF THE HONORABLE WILLIAM M'GILLIVRAY, SIMON M'GILLIVRAY, AND THOMAS THAIN, ESQUIRES; AGAINST HENRY MACKENZIE, ESQUIRE

Whereas, by certain articles of agreement made and entered into, and bearing date, at Montreal, the first day of November, one thousand eight hundred and fourteen, the Honorable William M'Gillivray, of Montreal, aforesaid, merchant, Simon M'Gillivray, of London, merchant, Archibald Norman M'Leod, Thomas Thain, John M'Tavish and Henry Mackenzie, all of Montreal, aforesaid, merchants, did enter into copartnership to carry on trade as merchants, and as agents for the North West Company, under certain stipulations and conditions, set forth in the said articles of agreement, which are hereby referred to, and among other things it was specially provided and agreed: That the said William M'Gillivray should "conduct and manage the correspondence and Finance Department, and with such assistance as he might require from any of his said partners, should superintend the general business of the concern: and that the said William M'Gillivray reserved to himself the right in case he should at any time find that the affairs of the said concern would admit of his absence from Canada so to absent himself accordingly; and that save and except the said William M'Gillivray, and also the said Thomas Thain (who so long as he should continue to hold the situation of agent of Sir Alexander M'Kenzie and Co.) should not be required to assume the management of any department unless the same should be in some manner connected with the agency of the North West Company, it should be at the option and disposal of the majority of the said concern to employ any of the said partners, and also the said Thomas Thain, in the event of his relinquishing the said agency of the said Alexander M'Kenzie and Co. in any manner or in any business, which might be deemed most conducive to the general benefit of the said concern, and that certain of the said partners of the said concern or firm should be entitled to draw from out of the funds of the said concern, in each year, certain sums of money, and no more, in order to meet their several personal expenses."—And whereas, by an indenture, bearing date the twenty sixth day of March last past, and made between the Governor and Company of Adventurers of England, trading into Hudson's Bay, of the first part, and the said William M'Gillivray and Simon M'Gillivray, and Edward Ellice, of Spring Garden, in the County of Middlesex, Esquire, of the second part, it was amongst other things agreed and provided, that the trade heretofore carried on by the said Governor and Company and the said North West Company respectively, should, for the space of twenty one years, commencing with the outfit of the year one thousand eight hundred and twenty one, (but subject to the terms therein contained,) be carried on by and in the name of the said Governor and Company and their successors, exclusively.—And whereas, the said indenture and the terms and conditions therein contained, have been ratified and confirmed by the said North West Company, and also by the partners of the said concern or firm of M'Tavish, M'Gillivrays & Co., and the arrangements provided for by the said indenture, have in a great measure been carried into effect, and consequently the said North West Company has ceased to exist as a separate body, and the wintering partners thereof have, under the provisions contained in the said indenture, been appointed chief factors and chief traders, and as such, have become entitled to certain shares of the clear gains and profits arising from the said trade, so to be carried on as aforesaid, by and in the name of the said Governor and Company, and the said agency of the said North West Company, and also the said agency of Sir Alexander M'Kenzie & Co., have ceased and determined, except as in so far as regards to settling and closing the accounts of the outfit of the said North West Company for the year one thousand eight hundred and twenty, which is the last outfit made or to be made by the said North West Company. And whereas, the business and transactions carried on by the said house or firm of M'Tavish, M'Gillivrays & Co., under their said articles of copartnership have principally depended upon and been confined to the said agency of the said North West Company, and the said agency having ceased and determined as aforesaid, the said business and transactions of the said house or firm as connected with the same, must also cease and determine with the close of the said accounts of the said outfit of the year one thousand eight hundred and twenty. And whereas, the said Archibald Norman M'Leod and the said John M'Tavish have retired from the said firm or copartnership of M'Tavish, M'Gillivray & Co., and the undersigned, the majority of the remaining partners thereof, deem it necessary and requisite from henceforward until the termination of the said copartnership of M'Tavish, M'Gillivrays & Co. to confine their transactions solely to the completing and carrying into effect the said indenture and the said arrangements so made as aforesaid, with the said Governor and Company, and winding up, settling and realizing the accounts and affairs of the said firm or copartnership of M'Tavish, M'Gillivray & Co.; and for these purposes it is considered expedient that the said William M'Gillivray and the said Simon M'Gillivray should proceed to England forthwith, and that the said Thomas Thain shall, during their absence,

be entrusted with the superintendence and management of the general business of the said concern or firm of M'Tavish, M'Gillivrays & Co., in addition to the finances and accounts, of which, since the retirement of the said John M'Tavish, he, the said Thomas Thain has had the charge, under the general superintendence of the said William M'Gillivray.

First—It is therefore accordingly agreed and resolved, that the said house or firm of M'Tavish, M'Gillivrays and Co. shall from henceforward, and until the termination of their said articles of copartnership, confine their transactions solely to completing and carrying into effect the said arrangements with the said Governor and Company, and to winding up, settling, and realizing the debts, effects, accounts, and property of the said firm, and that the said house or firm of M'Tavish, M'Gillivrays & Co. shall not, and that any individual partner thereof shall not be competent in the name, or on the behalf of the said house or firm of M'Tavish, M'Gillivrays & Co. to contract or enter into new transactions, purchases, engagements, or speculations whatsoever.

Second—That during the absence from this Province of the said William M'Gillivray, and the said Simon M'Gillivray, Thomas Thain be authorised, and he is hereby accordingly authorised to superintend and to conduct the correspondence, the finances, and the general business of the said house or firm of M'Tavish, M'Gillivrays & Co., and to hold and possess the books, papers, and all other property of the said house or firm, on behalf of and in trust for all parties holding any just and lawful part, share, claim, or interest therein, or any part thereof.

Third—That the said Thomas Thain shall be personally responsible for any future violation of the ninth article of the said copartnership agreement, being that which specifies and limits the sums of money to be drawn from the funds of the said copartnership or concern by the individual partners thereof to meet their several personal expenses.

In witness whereof, and of our consent and concurrence therein, we have hereunto set our hands and seals, at Montreal, this fifteenth day of November, one thousand eight hundred and twenty-one.

(Signed) In presence of
C. TATE.
WILLIAM CASTLE.

WILLIAM M'GILLIVRAY. (seal)
SIMON M'GILLIVRAY, (seal)
THOMAS THAIN. (seal)

Duplicate referred to in the annexed Protest.

H. GRIFFIN, N. P.

On this day, the seventeenth of November, in the year of our Lord one thousand eight hundred and twenty one, we, the undersigned Public Notaries duly commissioned, and sworn in and for the Province of Lower Canada, residing in the City of Montreal, at the special instance and request of the honorable William M'Gillivray, Simon M'Gillivray and Thomas Thain, Esquires, the majority of the partners in the house and firm of M'Tavish, M'Gillivrays and Company, in the said City of Montreal, merchants, did go to the house of Henry Mackenzie, Esquire, in Montreal aforesaid, one of the partners in the said house and firm, and there speaking to himself did signify unto him the annexed instrument of resolves made by the said majority of partners;—at the same time, at the request aforesaid, did declare to protest, as by these presents we do solemnly protest, against the said Henry Mackenzie for all costs, charges, losses, damages, and injuries, that may result by or from all or any act, or acts, of the said Henry Mackenzie should he go, act, or do contrary to the said resolves contained in the said annexed instrument, determined upon by the said William M'Gillivray, Simon M'Gillivray, and Thomas Thain, as the majority of the partners in the said house and firm of M'Tavish, M'Gillivrays & Company.

And to the end that the said Henry Mackenzie may not have cause to pretend ignorance in the premises, we, the said Notaries, at the same time delivered unto him a duplicate of the said instrument of resolves as well as a copy of these presents annexed.

Thus done and protested at the said City of Montreal, on the day, and month, and year, first above written.

(Signed) THOMAS BARRON, N. P. & H. GRIFFIN, N. P.

(A true Copy.)

One marginal note. Three words obliterated.

H. GRIFFIN, N. P.

F

SIGNIFICATION TO AND PROTEST AGAINST THE HONORABLE WILLIAM M'GILLIVRAY, SIMON M'GILLIVRAY, AND THOMAS THAIN, ESQUIRES, AT THE REQUEST OF HENRY MACKENZIE, ESQUIRE.

Whereas on this day, the seventeenth day of November, one thousand eight hundred and twenty-one, I, Henry Mackenzie, one of the partners of M'Tavish, M'Gillivrays and Company, have received notice of divers transactions and arrangements said to be entered into by the said partnership, and particularly of the retiring of one of the partners—Archd. M'Leod, Esquire.

And whereas divers resolves are mentioned in the said notice to have been entered into by the said partnership. And whereas measures are said to have been adopted by the said partnership to wind up the affairs thereof. And whereas the absence of the Honorable William M'Gillivray and Simon M'Gillivray are said to be deemed necessary by the said partnership, and also that the said North West Company had ceased and determined. And whereas in the said notice it is particularly expressed by one of the resolves said to be made by the said partnership, that Thomas Thain, one of the partners, shall be hereafter responsible for any *future* violation of the ninth article of the copartnership agreement, being that which specifies and limits the sum of money to be drawn from the funds of the said copartnership or concern by the individual partners thereof to meet their several personal expenses. Now I, the said Henry Mackenzie, one of the partners aforesaid, do hereby declare and solemnly affirm that all the above arrangements, resolves, and other measures, said to be taken and adopted by the said partnership, have been made, taken, and entered into, without my knowledge and consent, and even without any notice thereof—which violates every sacred principle of reciprocity in agreements, and dissolves every social tie. And as to the second resolve said to be entered into by the said partnership—it is a conspiracy. And I further declare, that I object to the absence of any one of the partners, because they declare by the said pretended third resolve made by the said partnership, that Thomas Thain shall be personally responsible for any *future* violation of the ninth article of the said copartnership agreement without providing for any liability for the *past* violation of the same.

In witness whereof, I have hereunto set my hand and seal this seventeenth day of November, one thousand eight hundred and twenty-one.

(Signed) H. MACKENZIE. (L. S.)

In presence of

(Signed) C. JULIUS BROWN.

H. GRIFFIN.

A true Copy.

H. GRIFFIN, N. P.

On this day, the seventeenth of November, in the year of our Lord one thousand eight hundred and twenty-one, WE, the undersigned Notaries Public, duly commissioned and sworn in and for the Province of Lower Canada, residing in the City of Montreal, at the special instance and request of Henry Mackenzie, Esquire, of the said city of Montreal, one of the partners in the house and firm of M'Tavish, M'Gillivrays & Company of Montreal aforesaid, merchants, did go to the house of Thomas Thain, Esquire, in the said city of Montreal, and there did signify unto the Honorable William M'Gillivray, Simon M'Gillivray, and Thomas Thain, Esquires, by speaking to the said Thomas Thain, the annexed declaration of (and signed and sealed by) the said Henry Mackenzie, at the same time, at the instance and request aforesaid, did declare to protest, as by these presents we do solemnly protest against the said William M'Gillivray, Simon M'Gillivray, and Thomas Thain, jointly and separately, and all and every other person and persons, whom it doth or may concern, for all costs, charges, damages, and injuries already suffered, or that can, shall, or may hereafter be suffered by the said Henry Mackenzie for and by reason of the resolves and determinations made by them, the said William M'Gillivray, Simon M'Gillivray, and Thomas Thain, signified this day upon the said Henry Mackenzie, and referred to in the said annexed declaration, and further for and by reason of all or any act or acts, thing or things, by them or either of them already done, or that may hereafter be done by them the said William M'Gillivray, Simon M'Gillivray, and Thomas Thain, or any or either of them, in virtue or in consequence of their said resolves and determinations, whereby the rights, prerogatives, or interests of the said Henry Mackenzie shall or

may in any manner or way be prejudiced, hurt, or injured. And to the end that the said William M'Gillivray, Simon M'Gillivray, and Thomas Thain, or any or either of them, may not have cause to pretend ignorance in the premises, we, at the same time, delivered unto the said Thomas Thain a duplicate of the said declaration, signed and sealed as aforesaid, with a certified copy of these presents annexed.

This done and protested at Montreal aforesaid, on the day, month, and year first above written, in the afternoon.

(Signed)

THOMAS BARRON, N.P. & H. GRIFFIN, N.P.

A true copy of the original minute.

H. GRIFFIN, N.P.

G

PROTEST BY HENRY MACKENZIE, versus WILLIAM M'GILLIVRAY, SIMON M'GILLIVRAY, THOMAS THAIN, AND ARCHIBALD M'LEOD, ESQUIRES.

Whereas, by certain articles of agreement, bearing date the first day of November, one thousand eight hundred and fourteen, made and entered into by and between the Honorable William M'Gillivray, of Montreal, Simon M'Gillivray, of London, merchant, then present at Montreal, Archibald Norman M'Leod, Thomas Thain, John M'Tavish, and Henry Mackenzie, all of Montreal, aforesaid, merchants, (after reciting divers articles of agreement and other instruments,) they, the said parties did consent and agree to continue and carry on trade as copartners in the business theretofore carried on by the late house of M'Tavish, M'Gillivray & Co., and by the new house since the formation of the same, and all matters in which they were in any wise interested or concerned, and also in all other matters which the said parties thereto might see fit to undertake or be concerned in, for and during the term of nine years. And whereas, by the tenth article of the said agreement, it was expressly agreed that as it was considered desirable at some definite period before the close of the concern, arrangements should be made for continuing the business to be carried on thereby, or for winding up the same and realizing the property and effects thereunto belonging, at least two years before the termination of the partnership, that is to say, on or before the thirtieth day of November, one thousand eight hundred and twenty, the respective parties thereto should be competent to require each from the others a distinct and explicit avowal of their intention in regard to renewing and continuing articles of copartnership, or winding up the concern, as the case might be—and in the event that the majority should enter into arrangements for the renewal thereof, the new concern were to be subject to certain engagements, and to enjoy such rights and privileges, and to observe and fulfil such regulations as were more particularly mentioned in the said article. And it was further agreed upon that in the event of a majority not entering into arrangements for a renewal thereof, and that it should become necessary to wind up and close the business and transactions of the said partnership, in that case it should be the duty of the partners employed in the agency of the North West Company to perform their usual duties in the summer following the termination of the said partnership. That it should be the duty of the London partner to receive and realize the return in the usual manner, and that it should be the duty of the partner employed in keeping the books to remain at his post, for which several duties the said respective partners should receive an adequate recompense—and that all other stock should be realized in such manner as a majority should see fit. And whereas, by the eleventh article of the said agreement, it was further stipulated and agreed upon by the said parties, that the death or retiring of any partner, or admission of any active partner or partners should not affect, determine or change the partnership thereby established, nor the period of its duration, but the same should nevertheless be continued and carried on under all the clauses, conditions, and stipulations therein contained, until the final conclusion and determination of the aforesaid term of nine years. And whereas, on the seventeenth day of the present month of November, a certain writing or protest, with certain resolves thereunto annexed, signed and sealed by the Honorable William M'Gillivray, Simon M'Gillivray, and Thomas Thain; parties to the above recited agreement, was signified or served upon me, the said Henry Mackenzie one other of the said parties to the said recited agreement, in which said resolves were recited, certain articles of the said above recited agreement, and also certain indentures made between the Hudson's Bay Company and the Honorable William M'Gillivray, and others, and that the same had been ratified by the North West Compa-

ny, and also by the partners of the house of M'Tavish, M'Gillivrays & Co., and that certain clauses therein mentioned had been carried into effect, and that the agency of the North West Company and the agency of Sir Alexander M'Kenzie & Co. had ceased, with the exception of the outfit one thousand eight hundred and twenty. And which said resolves further recited, that the business and transactions carried on by the said M'Tavish, M'Gillivrays & Co., had principally depended and been confined to the agency of the North West Company, and that the said agency having ceased, the business and transactions connected with the same had ceased; and further recited that John M'Tavish and Archibald Norman M'Leod had retired from the said copartnership—and that the undersigned majority of the remaining partners thereof, deemed it necessary and requisite from thenceforward, until the termination of the copartnership of M'Tavish, M'Gillivrays & Co., to confine their transactions to the completing and carrying into effect the said indenture and the said arrangements with the said Governor and Company, and winding up, settling, and realizing the accounts and affairs of the said M'Tavish, M'Gillivrays & Co. and for those purposes it was deemed expedient that the said William M'Gillivray and Simon M'Gillivray should proceed to England forthwith, and that the said Thomas Thain should, during their absence, be entrusted with the superintendence of the general business of M'Tavish, M'Gillivrays & Company, in addition to the finances and the accounts of which, since the retirement of the said John M'Tavish he had the charge. Wherefore it was agreed and resolved:—First, That the copartnership of M'Tavish, M'Gillivrays and Company should thenceforward, and until the termination thereof, confine their transactions solely to completing and carrying into effect the said arrangements with the said Governor and Company, and to winding up, settling, and realizing the debts and property of the said firm, and that the said house or firm of M'Tavish, M'Gillivrays & Company should not, and that any individual partner should not be competent *in the name or on the behalf* of the said firm of M'Tavish, M'Gillivrays and Company, to contract or enter into any new transactions, purchases, engagements, or speculations whatsoever. Secondly,—That during the absence of the said William M'Gillivray and Simon M'Gillivray, the said Thomas Thain should be authorised to superintend and to conduct the correspondence, the finances, and the general business of the said partnership, and should hold and possess the books, papers, and all other the property of the said house or firm on behalf of and in trust for all parties holding any just and lawful part or interest therein or any part thereof. And thirdly,—That the said Thomas Thain should be personally responsible for any future violation of the ninth article of the copartnership, being that which limits the amount to be taken out of the general funds by the individual partners for their personal expenses. Now I, the said Henry Mackenzie, one of the said parties to the above recited agreement, taking into due consideration all the clauses, stipulations, and conditions thereby entered into and agreed upon by and between all the parties thereto; and also having maturely and attentively considered the above recited resolves annexed to the said writing or protest so signified to me as aforesaid, do now for the preservation of all my rights and interests contained in the said recited articles of copartnership, solemnly protest against all the said resolves and the reasons contained in the recitals preceding the same, as being in direct contradiction to and violating the spirit and true intent and meaning of the above recited articles of copartnership entered into with me; and I hereby further protest against the said William M'Gillivray, Simon M'Gillivray, and Thomas Thain who have entered into the said resolves, and signed and sealed the same; for all costs, damages, interest, or injury which I have already suffered or hereafter may suffer by the same, either in property or character, and also against any act or acts which they or either of them may or do, or undertake to do, or cause to be done, under the pretended authority of the said resolves. And to the intent that they nor either of them may pretend cause of ignorance of the same, I hereby make known to them my lawful objections thereto.

First;—Because they the said William M'Gillivray, Simon M'Gillivray, and Thomas Thain, (calling themselves a majority of partners, themselves only being present,) have assumed the right of altering and changing the essence or basis of the above recited articles of copartnership, whereas by the same, a majority of the partners can regulate only the departments or duties of the respective partners as therein specified.

Secondly;—Because it was stipulated and agreed upon by the above recited articles of copartnership, that the parties thereto should not only carry on the business formerly transacted by all the preceding partnerships therein mentioned, but also all other matters which they might see fit to undertake or to be concerned in—whereas, by their resolves, they limit and confine the transactions thereof solely to the completing and carrying into effect the arrangements with the Adventurers of the Hudson's Bay Company, and to the winding up, settling, and realizing the effects and debts of the said concern, and in restraining every individual partner thereof from contracting or entering into any engagement during the remainder of the term of the said agreement of copartnership, whereby the original intention of the association is totally frustrated and abridged, and which the power of no majority could alter or modify.

Thirdly,—Because the distinct and explicit avowal of the arrangements for winding up, settling, and realizing the accounts and affairs of the said partnership entered into by the majority, as expressed by the said resolves, was only notified to me on the seventeenth of the present month of November, one thousand eight hundred and twenty-one. Whereas by the tenth article it is expressly agreed upon, that at least two years before the expiration of the said partnership, viz. on or before the thirtieth day of November, one thousand eight hundred and twenty, a distinct and implicit avowal of the respective parties should be given to each other of their intention in regard to renewing and continuing articles of partnership, or winding up the concern, as the case might be. And, in which said tenth article herein before particularly recited, a provision is made for winding up and settling the affairs of the said partnership; in case a determination or avowal, as agreed upon by the said articles of copartnership, should have been made.

Fourthly,—Because by the eleventh article herein before recited, it was expressly stipulated and agreed upon, that the death, or admission of any partner, should not affect, determine, or change the partnership thereby established, nor the duration thereof, but that the same should nevertheless be continued and carried on under all the clauses, conditions, and stipulations in the said agreement contained until the final conclusion. This special clause or article assures the inviolability of the agreement as to its duration and extent of business, for it was by the first article already agreed upon for the term of nine years, and by the said eleventh article it is ratified and renewed, with an assurance that events of death or innovation should not change nor lessen its duration, and that it should be continued under all the stipulations and conditions contained in the said agreement until its final determination—one of which stipulations was to carry on all business which might be entered into for nine years—whereas the first resolve herein before recited, entered into by the majority, the transactions of the said partnership are limited, by confining the same solely to the completing of the arrangements entered into with the Hudson's Bay Company, and to the winding up of the affairs of the said partnership of M'Tavish, M'Gillivray & Company.

Fifthly,—Because by the fifth article of the said above recited agreement, it was stipulated, that the said Honorable William M'Gillivray, should conduct and manage the correspondence and finance department, and with such assistance as he might require from any of his said partners, should superintend the general business of the concern—whereas in opposition thereto, by the second of the above recited resolves, the said Honorable William M'Gillivray has authorised the said Thomas Thain to superintend the general business of the said firm of M'Tavish, M'Gillivray and Company—which superintendence of the general affairs could not be deputed by him to any one of the partners, as is plainly evinced and shown by the sixth article, which in the event of the death of the said William M'Gillivray, or his absence from the Province, expressly declares, that the said Simon M'Gillivray should come to Montreal, and assume the management of the finance and correspondence departments only, leaving the authority, which such a power is supposed to give, equally to all the remaining partners.

Sixthly,—Because by the said above recited resolves it is attempted that I, the said Henry Mackenzie, should be left without any participation in the business of the said partnership, and thereby deprived of watching over my interests—which resolves, if carried into effect, will justify and demand as a duty from me every opposition in my power.

In witness whereof, I have hereunto set my hand, this twenty-first day of November, in the year one thousand eight hundred and twenty-one.

Twent-five words being erased, three words interlined, and one marginal note.

H. MACKENZIE.

Montreal, 21st November, 1821.—We, the undersigned, do acknowledge to have received a true copy of the foregoing protest, and consider the same as valid as if the said protest had been made by a Notary Public.

WILLIAM M'GILLIVRAY,
SIMON M'GILLIVRAY,
THOMAS THAIN.

H

HENRY MACKENZIE TO SIMON M'GILLIVRAY AND THOMAS THAIN, ESQUIRES.

Montreal, 22d November, 1822.

Dear Sirs,

The length of time that has elapsed since I last saw the books of M'Tavish, M'Gillivrays & Co., and the agents of the North West Company, has effaced from my recollection many of the things recorded in them, and left but a feeble impression of others. I am thus, at a time when the close of the concern is at hand, ignorant of the precise relation in which I stand with my associates in business, and without the means of forming a just estimate of any rights which may belong to me as a person so connected; an acquaintance with which, you will, I dare say, allow, is necessary to place me upon a footing with you in any discussions to which the approaching settlement between us may give rise.

I therefore request that I may have immediate and free access to the above-mentioned books, for the purpose of making such extracts from them as I may require.

Further, our connexion being now so near a termination, I think it a duty I owe to myself to urge an immediate settlement of those books; to facilitate the accomplishment of which, I will be prepared, on Monday next, to audit in company with yourselves all the books of account in which I have any concern.

I trust, Gentlemen, that as I am conscious of having allowed no improper feeling to guide me in making these requests, so I trust they will be received in good part by you, and that you will suffer no unfounded suspicion of *latent* motives of action in me (which I am sorry to say I could perceive swayed decisions on former occasions) to stand in the way of acceding to what I think every man must call a reasonable request.

Be assured, Gentlemen, that in whichever way our matters may be finally arranged, I wish nothing to occur to interrupt, in the smallest degree, the offices of friendship which we have hitherto been disposed to extend to each other.

I am, with due regard,

Dear Sirs,

Your most obedient humble Servant,

H. MACKENZIE.

I

Montreal, 23d November, 1822,

Dear Sir,

In reply to your letter of yesterday, we deem it requisite to refer you to the partnership agreement of the firm of M'Tavish, M'Gillivrays & Co., the *tenth* article of which, in specifying the duties to be performed by the respective partners—"in the event that it shall become necessary to wind up and close the business and transactions of this concern or partnership,"—provides, amongst others, that "it shall be the duty of the partner, employed in keeping the books and accounts of this concern, to remain at his post, and to make up and exhibit just, true, and accurate accounts of the *said returns*, (those spoken of are the returns to be obtained for the outfit of

the year,) "so to be realized, and all other matters and transactions in which the concern may remain interested." Now that it *has* become necessary so to wind up and close the said business and transactions, is perfectly well known to you, and we have to inform you further, that by a resolution of the requisite majority* of the concern, Mr. Thain is authorised and appointed to perform the duty above specified.

That this duty should devolve upon Mr. Thain, almost necessarily follows, from the article quoted, since for the last four years *he* has been the partner employed in keeping the books and accounts of the concern, and as the realization of the returns, mentioned in the agreement, was necessarily to take place before the accounts depending upon them could be settled, and since you know, as well as we do, what time is required for realizing the returns of the outfit in question, it is quite unnecessary for us to point out to you what time must elapse before the production of the accounts specified in the agreement can be required.

We deem it requisite also to refer you to a certain deed, bearing date the 6th day of April, 1821, reciting and ratifying the recent arrangements with the Hudson's Bay Company, and of which you have recently received a copy. We refer you particularly to the stipulations for balancing inventories with the Hudson's Bay Company, of the first of June, 1823; and those for the payment to the firm of M^cTavish, M^cGillivrays & Co., of certain shares of profits on the outfits of 1821 and 1822, "in full discharge of all claims and demands of such house or firm, in respect of the trade or concerns of the said North West Company, or in any wise relating thereto." These shares of profit on the outfit of 1822 cannot be realized, or even ascertained, before the summer of 1824 at the soonest; and the accounts of the agents of the North West Company cannot be brought to any settlement, as to the transfer of capital; until after the balance of inventories with the Hudson's Bay Company shall be adjusted in June next; nor probably as to the final results until after the settlement with retired partners, which is contingent upon the result of the outfits of 1821 and 1822. Therefore any investigation of these accounts, at this time, is premature, and, in fact, impracticable; and, for the very same reasons, such also is the case with the books of M^cTavish, M^cGillivrays & Co.—the settlement of which depends upon the previous result of the North West accounts; and this dependence is no new discovery to any of us, since it necessarily arises from the intrinsic nature of the business, and is manifestly contemplated by the articles of our partnership, and by every other instrument describing or referring to our transactions.

A statement of the probable result of these concerns was made out for your satisfaction last year,† and since that time, and since the resolution adopted and communicated to you, to enter into no new transactions during the remainder of the partnership, no further entries have been made in the books. Mr. Thain has merely kept temporary records of transactions which under the resolution in question he was authorised to superintend and conduct; therefore you would derive no benefit or information from the access which you seek to the books, and at this moment it would be inconvenient to produce them for your proposed audit.

From the statement in question, and the state of your private account,§ it is very evident that you have drawn from the funds of the partnership much more money than by the articles of agreement you were entitled to draw,|| and more we fear than the probable amount of your share of the profits, even if they were now realized, instead of being, as you know they are, contingent upon the dependencies already stated; and as you brought no capital into

* According to this principle, Articles of Copartnership would be nugatory, since they might always be violated by the majority.—H. M^cK.

† If so, those who directed it must have changed their minds, for I never received it.—H. M^cK.

§ I never received them.—H. M^cK.

|| I believe a considerable part was expended in the business of the firm.—H. M^cK.

the house,* it is only your share of profits that can come to balance the large sums of money heretofore advanced to you. We are as anxious as you can be to have all these matters brought to a point; and we trust it is unnecessary to declare that we have no wish or intention whatever to deprive you in the slightest degree of any right or advantage to which you may be justly or lawfully entitled; therefore every account in which you have any interest shall as speedily† as possible be settled, and submitted to such *audit* or examination as you may think requisite, but it is impossible to anticipate settlements depending on future contingencies.

We remain,

Dear Sir,

Your most obedient Servants,

SIMON M'GILLIVRAY.
THOMAS THAIN.

K

Monday Evening, 8½ o'clock, 25th November, 1822.

Dear Sir,

Your and Mr. S. Gillivray's letter of the 23d, I received this evening, upon my return from Terrebonne. I am sorry to say it is no answer to mine to you. You have either misapprehended its chief purport, or not choosing to comply with the request it contained, have evaded the question. The lengthy statement you have entered into establishes a point I never meant to deny, namely, that the books cannot be finally closed, nor the affairs wound up, till the outfits be realized. My request embraced two objects—Access to the books for the purpose of making extracts for my individual satisfaction, and an audit, or examination, or scrutiny, if you will, of them as they now stand; an explanation of *past* transactions, not a premature settling of "contingencies" that depend upon materials yet to be procured. Is there aught in the agreement to prohibit this!—to prohibit a partner from seeing the books of the association to which he belongs! If there be such a clause, show it. I must be permitted to say that I am very harshly, not to say unfairly, dealt with. This, I am convinced, must be the conclusion every unbiassed mind must come to on the subject.

Pray be explicit, and acquaint me whether you mean to deny my request as here explained.

I am, most truly yours,

H. MACKENZIE.

I must have an early answer to-morrow, if you please.

H. M.

THOMAS THAIN, Esq.

* This is not true:—I made over to the firm my stock in the concerns of "M'Kenzie, Oldham & Co." and "Henry Mackenzie and Jacob Oldham," of Terrebonne, and gave Mr. M'Gillivray leave to realize it, while I was busily engaged here and elsewhere on the affairs of the North West Company in the contest with Lord Selkirk. If that stock has not been as productive as it would have been by my own exertions the blame lies on him who neglected it when it became a part of the capital of M'Tavish, M'Gillivray & Co., and must be considered as a part of his administration of the finance of the latter firm.—H. M'K.

† This speed is excessively slow, and as yet has not equalled that of the snail.—H. M'K.

L

Montreal, 26th November, 1822, (Noon.)

Dear Sir,

In answer to your letter of yesterday evening, which I have this morning communicated to Mr. S. McGillivray, I beg leave to inform you that the lengthy statement you allude to was not written *with a view to evade your question*. Our letter was written with the intention of explaining to you our reasons, or rather our opinions, why we did not consider it necessary to proceed to the *audit* or inspection of the books you allude to, and we are still of the same opinion, that no good could result to either party from such inspection at present. But as you require an explicit answer, I beg leave to inform you, that we cannot agree to your request; and you are well aware (independent of the state of the office) that my time can be much more beneficially employed attending to other matters.

I remain,

Dear Sir,

Your most obedient Servant,

THOMAS THAIN.

H. MACKENZIE, Esq.

